



State of Utah  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING

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March 1, 1999

Mine file  
M/049/032

CERTIFIED RETURN RECEIPT REQUESTED

No. P 074 976 908

Mr. and Mrs. Lynn Fowers  
Fowers Fruit Ranch, LLC  
215 South 800 East  
Genola, Utah 84655

Re: Informal Hearing on the Matter of Approval of a Large Mining Operation by the Division of Oil, Gas and Mining, Valley Asphalt, Inc., Ekins East Project, M/049/032, Utah County, Utah

Dear Mr. and Mrs. Fowers:

**Background**

On January 28, 1999, an Informal Hearing was held to discuss objections to the Division of Oil, Gas and Mining's (the Division's) approval of a large mining permit for Valley Asphalt's Ekins East Quarry. Representing the Division were Mary Ann Wright, Associate Director of Mining; Wayne Hedberg, Permit Supervisor, Minerals Regulatory Program; and Lynn Kunzler, Senior Reclamation Specialist, Minerals Regulatory Program. Lowell Braxton served as Hearing Officer.

The Informal Hearing was held under the authority of the regulations governing the Division's Minerals Regulatory Program, R647-4, Large Mining Operations; Non-coal. The hearing which commenced at 7:00 p.m. in the Genola Town Hall, 74 West 800 South, Genola, Utah, consisted of four parts:

- a. Introduction and welcoming remarks by Lowell Braxton.
- b. Background on the Division's Minerals Regulatory Program by Wayne Hedberg and Lynn Kunzler.
- c. Specifics of Valley Asphalt's mining and reclamation plan for the Ekins East Quarry by Brent Sumsion, with opportunity for discussion of the plan and related concerns by the public.
- d. Public comments regarding the viability of the permit application under the Division's regulations.

Items a, b, and c, above were done off the record. A record was created for the public comments contained in item d by Associated Professional Reporters, Scott M. Knight, Registered Professional Reporter. A copy of this record is attached as Exhibit A.

### **Public Comments of Record**

Since a complete transcript of the "for the record" portion of the hearing is appended, only a summary of issues germane to the Division's Minerals Regulatory Program will be outlined here.

*Earl Joseph Seeley:* Operating procedures are not stringent enough with respect to fugitive particulate control in the mining and processing operation. Transcript, p. 4.

*Alan Riley:* Air quality for the reasons mentioned (by Mr. Seely). Transcript, p. 5.

*Lynn Fowers:* Dust is a detriment to our crops. Transcript, p. 7.

Problems with dust boiling out of their (Valley Asphalts's) quarry, and past his house, on a Saturday. Transcript, p. 8.

Comments more germane to Division of Air Quality permits on transcript pages 9, 10, 11 and 12.

*Sherryl Fowers:* Too many "gravel pits" operating in Utah County. Transcript, p. 16.  
Fugitive dust. Transcript, p. 17.

Noise, windows rattling, working hours. Transcript, p. 21.

Operating hours, plus "asphalt burning for the asphalt." Transcript, p. 22.

Governmental responsibility and accountability for permitting an operation such as Valley Asphalt. Transcript, p. 23.

*Beverly Kraut:* Health issues, juxtaposition of industrial and residential sites. Transcript, p. 26, 27, 28.

### **Findings of Fact**

1. Testimony provided on record at the Informal Hearing suggests that under certain conditions dust blowing from the Ekins East Quarry could have a deleterious effect on nearby orchards.

2. The operating plan for the Ekins East large mining operation is lacking in detail with respect to dust control during routine mining operations.

3. The mining activity contemplated by Valley Asphalt at the Ekins East Quarry falls under the domain of the Division of Oil, Gas and Mining's Minerals Regulatory Program, Utah Code Ann. § 40-8 et seq. (1953, as amended), and Utah Administrative Code R645-4 governing large mining operations in Utah.

4. Testimony provided off the record at the Informal Hearing voiced concerns regarding timing, frequency and magnitude of blasting operations that are contemplated in the operating plan for the Ekins East Quarry.
5. The operating plan for the Ekins East Quarry is lacking in detail with respect to timing, frequency and magnitude of blasting operations.
6. In all other matters pertaining to the mining and reclamation plan, M/049/032, Valley Asphalt's application comports with the Division of Oil, Gas and Mining's Minerals Program requirements for large mining operations.
7. Valley Asphalt has posted a reclamation bond with the Division of Oil, Gas and Mining in the amount specified in the mining and reclamation plan.

### **Conclusions of Law**

1. Due and regular notice of the time, place and purpose of the Informal Hearing was properly given to all interested parties in the form and manner required by law and the rules and regulations of the Board of Oil, Gas and Mining ("Board") and the Division. Public notice and appeal of large mining operations are found at R647-4-116., 1 through 4.
2. "Mining operations" means (in part), those operations conducted on the surface of the land for the exploration for, the development of, or extraction of a mineral deposit, including but not limited to, surface mining, and the surface effects of underground and in situ mining, and the on-site transportation, concentrating, milling, evaporating, and other primary processing...." (R647-1-106)
3. The Informal Hearing held on January 28, 1999, was done under the authority contemplated at R647-4-4 and R647-5-102, (informal processes).
4. Utah Code Ann. § 40-8-2 (2) reads: "It is necessary to alter the surface of the earth to extract minerals required by our society, but this should be done in such a way as to minimize undesirable effects on the surroundings." (emphasis added).
5. Regulation R647-4-107.4., requires a demonstration in the operating plan for a large mining operation that, "all deleterious materials or potentially deleterious materials shall be safely removed from the site or kept in an isolated condition such that the adverse environmental effects are eliminated or controlled."

### **Order**

1. Within 30 days of receipt of this Order, Valley Asphalt will submit an amendment to its operation plan for the Ekins East Quarry that:

- a. Identifies sources of fugitive dust resulting from mechanical "mining operations" within the proposed permit area;
  - b. Identifies sources of fugitive dust resulting from surface disturbances and stockpiles created by "mining operations" within the proposed permit area; and
  - c. Identifies sources of fugitive dust within the proposed permit area that are not a direct consequence of "mining operations."
  - d. All sources applicable in 1. a. through 1. c. above shall be identified in the narrative portion of the operation plan, and in maps depicting the operational phase of this proposed large mining operation.
2. Within 30 days of receipt of this Order, Valley Asphalt will submit mitigation plans for inclusion in the plan for large mining operations that will minimize fugitive dust from the Ekins East Quarry identified at 1. a. through 1. c. above, during the life of the operation.
3. Within 30 days of receipt of this notice, Valley Asphalt will submit an amendment to its operating plan for the Ekins East Quarry that:
  - a. Establishes a tentative frequency for all non-emergency blasting operations.
  - b. Establishes a notification protocol for blasting operations.
  - c. Establishes an audible warning sequence and protocol sufficient to notify persons within range of flyrock resulting from the blast, that a blast is going to occur.
  - d. Establishes a distinct "all clear" protocol and signal sufficient to notify persons within range of flyrock resulting from a blast, that no further blasting on that date will occur.
4. The Division will review materials submitted for compliance with items 1 through 3 of this Order in a timely manner, and will, at its sole discretion, determine when compliance has been achieved.
5. No later than 30 days after the Division of Oil, Gas and Mining has granted approval of items 1 through 3 above, Valley Asphalt will publish the tentative blasting schedule and audible warning protocol in a newspaper of broad circulation to persons residing in the Genola, Utah environs, and will provide proof of said publication to the Division's Minerals Regulatory Program.
6. On an annual basis during the month of January, for the life of mining operations, Valley Asphalt will publish its tentative blasting schedule for that calendar year, and the

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Mr. and Mrs. Fowers

Ekins East Project, M/049/032

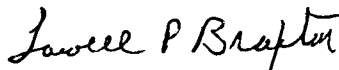
March 1, 1999

warning protocol for blasting noted in number 5, above.

7. Compliance with items 1 through 5 of this Order shall constitute full compliance by Valley Asphalt with issues raised at the January 28, 1999, Informal Hearing.

8. As contemplated at R647-5-106.17., any aggrieved party that participated at the Informal Hearing (including Valley Asphalt) may file a written appeal to the Board of Oil Gas and Mining within 10 days of the issuance of the Order. The written appeal shall be in the form of a Request for Agency Action for a formal hearing before the Board of Oil, Gas and Mining or its designated Hearing Examiner in conformance with the rules of practice and procedure before the Board, and shall also state the grounds for appeal and the relief requested.

Sincerely,



Lowell P. Braxton/  
Hearing Officer

vb

Attachment: Exhibit A

cc: W. Neil Brown, Mayor  
Brent Sumsion, Valley Asphalt, Inc.  
Arjun Ram, Western Aggregates  
Marv Maxwell, Division of Air Quality  
Alan Mecham, UDOT, Region 3  
Ann Jensen  
Protestors (names attached)  
Buck Rose (Utah County Planning & Zoning Commission)  
Utah County Board of Adjustments

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Mailed first class mail

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